IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-154

WILSON H. ELKINS, PRESIDENT,
UNIVERSITY OF MARYLAND,

Petitioner,

v.

JUAN CARLOS MORENO, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF OF PETITIONER

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INTRODUCTION

The primary purpose of this Reply Brief of Petitioner is to expose as unsupported by decisions of this Court and as unsound in constitutional theory the irrebuttable presumption doctrine advanced by respondents. In a vain attempt to salvage a doctrine at its nadir if not already extinct, the international bank students have distorted the post-*Salfi* irrebuttable presumption cases of this Court to create a constitutional theory neither the trial nor appellate courts below would recognize. Moreover, the students have attempted to becloud the legitimate state interests justifying the in-state policy of

the University of Maryland and to magnify erroneously, virtually to the status of a fundamental right, the alleged individual interests of respondents affected by the challenged classification. Finally, the international bank students now seek to raise two additional issues ignored by both the district court and the court of appeals. Petitioner will respond to these contentions in turn.

I.

UNDER *SALFI* AND ITS PROGENY, THE CHALLENGED FEATURE OF THE UNIVERSITY'S IN-STATE POLICY NEED ONLY BE SUPPORTED BY A RATIONAL BASIS.

Respondents urge that the University's in-state policy for tuition and fee purposes, which excludes from the definition of domicile nonimmigrant aliens, must be gauged by a stricter judicial scrutiny than this Court traditionally has used in assessing the validity of economic regulation. This contention appears evident from their repeated reliance on *Stanley v. Illinois,* 405 U.S. 645 (1972) (Brief for Respondents at *passim*), which this Court has frequently noted involved a classification affecting a fundamental right (*see Weinberger v. Salfi,* 422 U.S. 749 (1975)); from their assertion that the students' "vital" right to secure a public education is at stake in this case and not merely a dollar differential (Brief for Respondents at 53-54 & 56), which "right" this Court found not to be "fundamental" in *San Antonio Independent School District v. Rodriguez,* 411 U.S. 1 (1973); and from their attempt to place economic regulation decisions of this Court in a different category than the present case. *See, e.g.,* Brief for Respondents at 59. It is clear, however, that no fundamental right or constitutionally protected interest is involved here and thus *Salfi* and subsequent cases mandate employment of the traditional "rational basis" standard of judicial review. *See* Brief of Petitioner at 18-33.

Respondents also contend for a new form of "strict judicial scrutiny" to be applied under the following circumstances:

> Where the State, through a statute or administrative rule, makes a certain fact crucial to the entitlement to or enjoyment of property or liberty, it may not preclude individuals who seek to meet that factual test, and who are not in a class universally unable to do so, from proving that they do meet that test, unless the difficulties in determining the crucial fact through such an individualized hearing procedure would outweigh the individuals' interests affected.

Brief for Respondents at 42.

Furthermore, under the theory now advanced by the international bank students:

> [It must be] clear from the face of the enactment or . . . otherwise obvious that the enactment has made a certain fact crucial and then has concluded the inquiry into that fact for a certain class of people.

Id. at 12.

This formulation which is not even hinted at in the lower court opinions is an obvious Frankenstein's monster, composed of isolated portions of this Court's post-*Salfi* irrebuttable presumption opinions. To accept the parts respondents have assembled, however, would be to reject the basic tenets of these cases.

For example, the international bank students urge that only facial or "otherwise obvious" irrebuttable presumptions be measured by their stricter standard of constitutional review. Brief for Respondents at 12. Yet in *Usery v. Turner Elkhorn Mining Co.,* 428 U.S. 1, 24 (1976), this Court said that the mere fact that an enactment was phrased in terms of an irrebuttable presumption would not invalidate the statute "when its operation and effect are completely permissible." And

in *Califano v. Jobst*, ___ U.S. ___, 98 S. Ct. 95 (1977), and *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307 (1976), this Court sustained what could only have been termed as "facial" or "otherwise obvious" irrebuttable presumptions.

Salfi and its progeny also obliterate the contention of the international bank students that enactments denying inquiry into a fact crucial to a benefit must be strictly scrutinized. In essence, their argument again challenges only the form of the enactment, a course rejected in *Usery v. Turner Elkhorn Mining Co., supra.* More importantly, respondents' proffered distinction between conditioning benefits on a "factual test" and an "objective criterion" (Brief for Respondents at 45) runs contrary to cases such as *Murgia* and *Jobst.*

In *Murgia* this Court noted that the challenged enactment sought to assure the physical preparedness of policemen by mandating retirement at age fifty. 427 U.S. at 314.[1] Obviously, the statute irrebuttably presumed that at age fifty a policeman was physically unfit to serve, a clearly factual question into which the officer was not permitted to inquire. Again in *Jobst,* the statute purported to be concerned with dependency, a factual test, but no individualized determination was held to be constitutionally required. These cases demonstrate that even if the University's definition of domicile is considered a factual test, it is free to irrebuttably exclude some from meeting that test if there exists a rational basis for doing so.

A further significant problem raised by respondents' interpretation of this Court's recent cases is that their construction of the theory of irrebuttable presumptions — objective form: valid; facial presumption of factual

[1] Contrary to the international bank students' assertions (Brief for Respondents at 48-49), Massachusetts Board of Retirement v. Murgia, 427 U.S. 307 (1976), neither recited nor turned on the variety or rationales they have set forth.

matter: invalid — would enable a legislature with foresight to avoid all irrebuttable presumption arguments by eliminating any such form of the conclusive presumption from the face of a proposed statute by simply making the standard to be met into an objective form (although the presumption must underlie the statute for the legislation to make sense). By the interpretation given to the *Salfi* case by the international bank students, a statute so stated in the objective form should not be examined for the existence of a presumption behind the statutory language (Brief for Respondents at 48) since to do so "would represent a degree of judicial involvement in the legislative function which [the Court has] eschewed except in the most unusual circumstances." *Id., quoting with approval, Weinberger v. Salfi, supra* at 773. Hypothetically, then, where two statutes are challenged, each based on an identical conclusive presumption, one with that presumption on the face of the statute and the other with that presumption skillfully hidden by the mechanical form of an objective standard, a court may strike down the first, yet (under respondents' analysis of the recent cases) leave the second to continue in its operation of the conclusive presumption. Manifestly, it makes no sense to foster such a distinction.

The theory of irrebuttable presumptions urged by the international bank students also would require lower courts to balance individual interests against the administrative difficulties in providing individualized determinations. In cases like *Murgia* and *Jobst,* however, certainly no overt balancing was thought to be required by this Court. Indeed, it appears to be because the trial and appellate courts did engage in a balancing test in those cases that they were incorrectly decided below. Undoubtedly, there are few individuals in Jobst's situation and even this Court noted the "unusual hardship" the presumption imposed upon

him: yet the general rule was upheld. In *Murgia,* as here, there was an administrative device to inquire into factual matter which was irrebuttably presumed. (In *Murgia,* an annual physical exam; here, an appeals system). Nevertheless, under *Murgia,* a state is not constitutionally required to use that administrative device to make the crucial factual determinations.

Finally, the international bank students attempt to pigeonhole the irrebuttable presumption doctrine as *procedural* due process fails both in theory and practice.[2] To urge that a "liberty" interest sufficient to invoke procedural due process is at stake, respondents once again raise the fallacious notion (Brief for Respondents at 53) that some fundamental right to public education is involved in this case. *San Antonio Independent School District v. Rodriguez, supra. See also Memorial Hospital v. Maricopa County,* 415 U.S. 250, 260 n.15 (1974). And to find a "property" interest in the present case as urged by respondents would signal an abrupt and unwise retreat from this Court's recent decisions:

> "[Property interests] are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law — rules or understandings that secure certain benefits and that support claims of entitlement to those benefits."

[2] In Quilloin v. Walcott, ___ U.S. ___, 98 S. Ct. 549 (1978), this Court rejected a due process challenge argued on the basis of Stanley v. Illinois, 405 U.S. 645 (1972), a case on which respondents have placed major reliance. This Court in an unanimous opinion specifically noted that only the "substantive" rights of *Quilloin* were implicated under the due process clause and cited Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974), also relied on by respondents, in the same breath.

Bishop v. Wood, 426 U.S. 341, 344 n.17 (1976), *quoting with approval, Board of Regents v. Roth,* 408 U.S. 564, 577 (1972).

* * *

> "[A] person's interest in a benefit is a 'property' interest for due process purposes if there are . . . rules or mutually explicit understandings that support his claim of entitlement to the benefit and that he may invoke at a hearing."

Id., quoting with approval, Perry v. Sindermann, 408 U.S. 593, 601 (1972).

No state law, no rule, and no explicit understanding confers on the international bank students a property right in a preferential tuition rate.[3] On the contrary, they are clearly denied this right by the rule here in question. More importantly, as this Court's recent irrebuttable presumption cases make clear, when an enactment is challenged as creating an irrebuttable presumption, what is examined is whether the particular measure has a rational basis, the traditional *substantive* due process inquiry. *See Williamson v. Lee Optical Co.,* 346 U.S. 483, 488 (1955).

In summary, respondents advance a constitutional theory which is neither honest, consistent, nor workable.[4] It is a theory laden with unfettered judicial discretion, centering on determinations of whether a presumption is obvious or not, whether it involves a factual test or an objective criterion, and whether an interest in administrative convenience outweighs an

[3] Respondents' reliance on Arnett v. Kennedy, 416 U.S. 134 (1974), is misplaced, because there the employee had a *statutory* right not to be discharged without cause

[4] For example, on one hand the international bank students state that judges should not be permitted to search for an irrebuttable presumption behind the face of an enactment (Brief for Respondents at 48), and on the other hand ambiguously note that if the presumption is "otherwise obvious," a court should strike it down.

individual interest. It literally encourages trial judges to employ it as an "engine of destruction" for rational classifications and invites lower courts to turn the clock back to the judicial excesses and experimentation spawned by *Vlandis v. Kline*, 412 U.S. 441 (1973),[5] and away from the values of predictability and uniformity in constitutional adjudication which this Court's recent decisions have inspired. For these reasons, such a doctrine should be rejected.

II.

INTERESTS SERVED BY THE CHALLENGED FEATURE OF THE UNIVERSITY'S IN-STATE POLICY ARE RATIONALLY RELATED TO LEGITIMATE STATE GOALS.

In *Califano v. Jobst*, ___ U.S. ___, 98 S. Ct. 95, 100 (1977), this Court noted that under rational basis scrutiny a legislative or administrative classification "must be judged by reference to characteristics typical of the affected classes rather than by focusing on selected, atypical examples." *See also Idaho Department of Employment v. Smith*, ___ U.S. ___, 98 S. Ct. 327 (1977).

[5] Relying upon Vlandis v. Kline, 412 U.S. 441 (1973), the international bank students attempt to attribute a "permanent" nature to the alleged presumption at issue in this case because the University's policy now prohibits them from ever rebutting the presumption of nondomicile "for as long as the G-4 visaholders remain in G-4 status" (Brief for Respondents at 10). This effort is a distortion of the critical footnote nine in the *Vlandis* opinion, 412 U.S. at 452 n.9, which distinguishes Starns v. Malkerson, 401 U.S. 985 (1971). What respondents try to obscure is that the alleged constitutional deprivation at stake in this case is not a change in immigration status but the denial of a particular benefit: *viz.*, preferential tuition rates and other fees. The "permanent" feature of the *Vlandis* presumption was that in-state tuition *benefits* were conditioned on a criterion which could *never* be met during the individual's status *as a student* — the critical period for which the benefits were sought. If, as the University has demonstrated (Brief of Petitioner at 27), the international bank students do have the opportunity to obtain these particular benefits while in student status, the alleged presumption of nondomicile is not permanent (and thus unconstitutional) even under *Vlandis*.

Focusing on characteristics of nonimmigrants and other nondomiciliaries, it is easy to see the reasonableness of the presumption said to be at issue here. Nonimmigrants are neither expected nor permitted to remain in this country indefinitely. As noted by Mr. Justice Rehnquist, dissenting in *Nyquist v. Mauclet*, 432 U.S. 1, 20 n.3 (1977), nonimmigrants "are also decisively disqualified by federal law from establishing a permanent residence in this country . . . ." *See* 8 U.S.C. § 1101(a)(20). This general characteristic of the class has been recognized by this Court, *Nyquist v. Mauclet, supra* at 4, and conceded by respondents ("[I]t seems probable that the great majority of non-immigrant alien students at the University of Maryland fall into visa categories which . . . may not permit the establishment of American domicile). Brief for Respondents at 26. As a class they are not likely to have a close affinity to the State of Maryland.[6] As a class they are generally not in the

[6] Respondents have accused the University of resurrecting the "national affinity" interest rejected in Nyquist v. Mauclet, 432 U.S. 1 (1977). Unlike the statute challenged in *Mauclet*, the University of Maryland's in-state policy is not justified as offering an incentive for aliens to become naturalized. In this case, which does not involve a suspect alien/citizen classification (*see infra* at 12-15), the Chief Justice's dissent in *Mauclet* is particularly cogent:

> In my view, the Constitution of the United States allows States broad latitude in carrying out [economic incentive] programs. Where a *fundamental* personal interest is not at stake — and higher education is hardly that — the State must be free to exercise its largesse in any reasonable manner. New York, like most other States, does not have unlimited funds to provide its residents with higher education services; it is equally clear that the State has every interest in assuring that those to whom it gives special help in obtaining an education have or declare some attachment indicating their intent to remain within the State to practice their

country long enough to contribute much to the State's economy or they, like the international bank students here, are exempt by treaty from the requirements of state income taxation.[7] Over the long term, it is reasonable for the State to conclude that permanent resident aliens might contribute more to its economic well being than nonimmigrants or other nondomiciliaries, especially in light of the undeniable fact that an adjustment of immigration status to that of permanent resident alien is necessary for them to remain in this country indefinitely. Additionally, because the federal government can constitutionally deny economic benefits to nonimmigrants, *Mathews v. Diaz,* 426 U.S. 67 (1976), the States, if not permitted the same latitude via reasonable nondiscriminatory enactments, would be severly harmed by being forced to shoulder the shifted financial burden.

Finally, the administrative burden of making individualized determinations of domiciliary criteria for

special skills. It has no interest in providing these benefits to transients from another country who are not willing to become citizens. The line drawn by the State is not a perfect one — and few lines can be — but it does provide a rational means to further the State's legitimate objectives. Resident individuals who are citizens, or who declare themselves committed to the idea of becoming American citizens, are more liklely to remain in the State of New York after their graduation than are aliens whose ties to their country of origin are so strong that they decline to sever them in order to secure these valuable benefits.

432 U.S. at 14.

[7] The Internal Revenue Code, 26 U.S.C. § 893, *inter alia,* exempts salaries of international bank employees from federal income taxation. Section 894(a) exempts from tax income exempt under treaty. Section 894(b) further provides that for such income not connected with the conduct of a trade or business in the United States, "*a nonresident alien individual . . . shall be deemed not to have a permanent establishment in the United States at any time during the taxable year.*" (Emphasis added.)

nonimmigrants, although not staggering, is nevertheless quite substantial. More appeals, greater expense, additional personnel, and translators are virtually promised. No such burden is incurred when, as now, determinations for nonimmigrants are limited to questions of change of immigration status.[8]

The international bank students claim that if this administrative burden is balanced against their individual interests, the resulting constitutional equation is in their favor. Nothing could be further from the truth. A dollar differential, not a right to education, is at stake here, an amount roughly equivalent to the amount of state income tax an international bank parent is spared by treaty each year. Certainly no claim can be made that professional employees of the World Bank and the Inter-American Development Bank, with their generous array of salaries, fringe benefits (including the legal and other costs of this litigation (4th Cir. Brief for Appellees at 17)), and dependency allowances (*see* Foreign Assistance and Related Programs Appropriation Bill, 1978, H.R. Rept. 95-417, 95th Cong., 1st Sess., at 46-47 (June 15, 1977)), are unable to pay the differential. More importantly, at least for employees at the World Bank (and perhaps for those of the Inter-American Development Bank as well), neither the students nor their parents need to pay the differential at all, because the bank itself pays it in the form of a "tuition equalization subsidy." A. 41A-43A.

Finally, no great hardship is entailed if one of respondents adjusts his immigration status to obtain the in-state tuition rate, because at some point, as a non-immigrant visa holder, he will have to make that

[8] Respondents' argument in this regard is not advanced by the existence of an in-state appeal mechanism at the University, because a similar device capable of providing individual determinations existed in Massachusetts Board of Retirement v. Murgia, *supra.*

adjustment to stay in the country.[9] Moreover, under rational basis scrutiny only one answer to respondents' claim of alleged hardship is possible:

> We may assume that unnecessary hardship is incurred by persons just short of qualifying. But it remains true that some line is essential . . . . [A]ny line must produce some harsh and apparently arbitrary consequences. . . .

Mathews v. Diaz, supra at 83.

III.

THE UNIVERSITY'S APPLICATION OF ITS IN-STATE POLICY TO THE INTERNATIONAL BANK STUDENTS DOES NOT DISCRIMINATE AGAINST A "SUSPECT CLASS" AND IS RATIONALLY SUPPORTED BY IMPORTANT STATE INTERESTS.

Neither the district court nor the court of appeals decided respondents' claim that the University's in-state policy unconstitutionally discriminated against them in violation of the equal protection clause. Nevertheless, they press the issue here. They argue for a mechanistic application of "strict scrutiny" equal protection review based upon the notion that the challenged classification affects a "suspect class," namely, aliens. This is not the case, however. The international bank students are not *resident* aliens like the plaintiffs in the alienage decisions of this Court (*see*

[9] Throughout their brief, the international bank students conjure up difficulties in connection with the adjustment of their status from nonimmigrant to permanent resident alien. Foremost is the contention that the banks' own interpretation of their own loosely worded agreements "except in very exceptional circumstances" bars the banks from making the labor certification sometimes needed for adjustment to immigrant status. Brief for Respondents at 8. Such imaginary roadblocks cannot bear scrutiny. Moreover, a bank employee need not adjust his status and face the alleged spectre of loss of employment if the child who seeks to attend the University contributes more than half of his own support and as, one of respondents did in this case, adjusts to immigrant status.

Nyquist v. Mauclet, 432 U.S. 1 (1977); *Graham v. Richardson,* 403 U.S. 365 (1971)), and for whom this Court has shown a high level of solicitude. *See Nyquist v. Mauclet, supra* at 12 ("Resident aliens are obligated to pay their full share of the taxes that support the assistance programs. . . . The State surely is not harmed by providing resident aliens the same educational opportunity it offers to others"). In fact, permanent resident aliens can and do qualify for preferential tuition rates under the University's in-state policy on the same bases as citizens.

The classification at issue here is not between aliens and citizens. In terms of the benefit denied by the classification, it is predicated essentially on domicile with aliens on both sides of the classification.

Nondomiciliaries, a group consisting of out-of-state citizens and nonimmigrant aliens, are denied the preferential tuition while Maryland domiciliaries, who are citizens and permanent resident aliens, enjoy those benefits. Respondents argue that they are treated differently than out-of-state citizens in that the latter are free to exhibit the necessary domiciliary criteria to enable them to qualify. Such reasoning begs the question, however. Out-of-state citizens can no more qualify for the benefit than nonimmigrant aliens. The international bank students in the present case were permitted access to the University's appeals mechanism just as would be the case for an out-of-state citizen. But regardless of the opportunity to present evidence of domicile, the end result in terms of the benefit sought would be the same for both. Indeed, the policy similarly denies this benefit to some citizens whose financial contributions to the State can also be expected to be of limited significance and duration, specifically, those members of the military assigned to the University for educational purposes. Brief of Petitioner at 7.

Even if the classification at stake here were viewed as one between nonimmigrant aliens and permanent resident aliens, *Mathews v. Diaz*, 426 U.S. 67 (1976), would support its validity. In that case, this Court upheld the denial of Medicare benefits to nonimmigrants upon application of a rational basis equal protection standard. In so doing, the Court noted that the only reason state exclusion of *some* aliens could not be justified is because the State invariably treated out-of-staters and aliens differently. 426 U.S. at 85. The University's in-state policy does not suffer from such a defect in that *both* out-of-staters and nonimmigrants are denied the benefit.[10]

Respondents rely primarily on *Nyquist v. Mauclet*, *supra*, to support their contention that strict scrutiny is the equal protection standard to gauge the University of Maryland's in-state policy. The scheme condemned in *Mauclet*, however, denied scholarships to permanent resident aliens and harmed only aliens. Unlike the scheme in *Mauclet*, the University's policy does not coerce aliens to abandon that status and become citizens but merely premises its award of the benefit on some level of attachment and liability for contribution to the State to warrant the award of the benefit. The University denies preferential tuition rates to both out-of-state citizens and nonimmigrants and confers that benefit upon permanent resident aliens and other state residents. Moreover, in dicta in *Mauclet*, the Court suggested that New York could deny educational benefits to nonimmigrants who "may be precluded by

[10] Nor is Graham v. Richardson, 403 U.S. 365 (1971), applicable. At issue there was the absolute deprivation to permanent resident aliens of vital necessities of life, *viz.*, welfare benefits. And it would be ludicrous to analogize the 15 year durational requirement challenged in that case to an adjustment of immigration status to permanent resident alien which demands no set waiting period and which is required of an alien anyway to stay in this country permanently.

federal law from establishing a permanent residence in this country." *Id.* at 4. Additionally, unlike the resident alien scholarship applicants in *Mauclet*, who might legitimately make the claim that to deny them a scholarship is to deny them an education, respondents are only denied a dollar differential which they are more than able to pay (and apparently do not pay at all). *See supra* at 11. Finally, aliens as a class are characterized by a factor beyond control, *viz.*, the lengthy waiting period which the law requires before citizenship; but nonimmigrants who wish to stay in the country permanently must make the decision to adjust their status to permanent resident alien, and, as noted above, no waiting period is required for the adjustment. The international bank students are hardly the apprppriate group to contend that nonimmigrants are saddled with such disabilities and powerlessness as to qualify as a suspect class deserving of special protection (*see San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 24 (1973)), particularly where they claim a preferred position among aliens. Brief for Respondents at 36.

If "strict scrutiny" is not the standard to apply to respondents' equal protection contention, the challenged classification must be gauged by the rational basis test. As the University has demonstrated (Brief of Petitioner at 29-33), the in-state policy bears a rational relationship to the University's purpose of limiting its expenditures, achieving cost equalization between nonresidents and residents, efficiently administering the in-state determination and appeals process, and preventing disparate treatment among categories of nonimmigrants with respect to tuition and fee differentials.

IV.

THE UNIVERSITY'S IN-STATE POLICY DOES NOT VIOLATE THE SUPREMACY CLAUSE.

Respondents' argument that the University's policy violates the supremacy clause was not raised in their district court complaint (A. 3A-11A), nor briefed in the court of appeals. And neither court deigned to decide the point. For these reasons this Court could refuse to decide the question.

Even if the claim were properly before the Court, however, it would be without merit. In *Examining Board of Engineers, Architects & Surveyors v. Flores de Otero,* 426 U.S. 572, 605-06 (1976), this Court noted:

> We do not suggest . . . that a State, Territory, or local government, or certainly the Federal Government, may not be permitted some discretion in determining the circumstances under which it will employ aliens or whether aliens may receive public benefits or partake of public resources on the same basis as citizens.

And in *DeCanas v. Bica,* 424 U.S. 351, 355 (1976), the Court stated:

> [We have] never held that every state enactment which in any way deals with aliens is a regulation of immigration and thus per se preempted by this constitutional power, whether latent or exercised. . . . [S]tanding alone, the fact that aliens are the subject of a state statute does not render it a regulation of immigration, which is essentially a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain.

Petitioner submits that under these principles the question of how a public university defines domicile so as to govern eligibility for preferential tuition benefits falls into permissible regulation.

Unlike the situation in *Graham v. Richardson,* 403 U.S. 365 (1971), where stringent state residency requirements denied welfare benefits to permanent resident aliens, literally forcing them out of the country, the University's in-state policy has no effect on the admission of aliens into the United States. In addition, the policy does not affect "the conditions under which a legal entrant may remain," *DeCanas v. Bica, supra* at 355, because nonimmigrants could not permanently remain in this country in any event unless they adjusted their status to permanent resident alien. All that is at issue here is a dollar differential which the international bank aliens (or more properly, perhaps, their employing banks) are perfectly able to pay.

CONCLUSION

In summary, Petitioner contends that neither the due process, the equal protections nor the supremacy clause mandates the invalidation of the University's in-state policy for its treatment of nondomiciliaries who are not permanent resident aliens. For these reasons, and for those appearing in the Brief of Petitioner and the Brief of the American Council on Education, the Commonwealths of Kentucky, Massachusetts, and Virginia, and the States of Alaska, Connecticut, Delaware, Georgia, Idaho, Indiana, Louisiana, Maine, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oregon, South Carolina, South Dakota, Utah, Vermont, West Virginia, and Wyoming as Amici Curiae in Support of Petitioner, the judgment of the United States Court of Appeals for the Fourth Circuit should be reversed and *Vlandis v. Kline,* 412 U.S. 441 (1973), should be overruled.

Respectfully submitted,

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